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105TH CONGRESS
1ST SESSION

H. R. 1770

To prevent fraud, abuse, and waste in the Medicare and Medicaid Programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 3, 1997

Mr. STARK (for himself, Mr. MCDERMOTT, and Mr. WEYGAND) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Commerce and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To prevent fraud, abuse, and waste in the Medicare and Medicaid Programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS; REFERENCES IN ACT.

(a) SHORT TITLE.—This Act may be cited as the "Medicare and Medicaid Fraud, Abuse, and Waste Prevention Amendments of 1997".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents; references in Act.

TITLE I—ACCOUNTABILITY OF SERVICE PROVIDERS

PART A—SANCTION AUTHORITY

Sec. 101. Exclusion of entity controlled by family member of a sanctioned individual.
Sec. 102. Civil money penalties (CMPs) for kickbacks.
Sec. 103. CMPs for persons that contract with excluded individuals.
Sec. 104. CMPs for services ordered or prescribed by an excluded individual or entity.
Sec. 105. CMPs for false certification of eligibility to receive partial hospitalization and hospice services.
Sec. 106. Extension of subpoena and injunction authority.
Sec. 107. Kickback penalties for knowing violations.
Sec. 108. Elimination of exception of Federal Employees Health Benefits Program from definition of Federal health care program.
Sec. 109. Amounts of CMPs.
Sec. 110. Liability of physicians in specialty hospitals.
Sec. 111. Expansion of criminal penalties for kickbacks.

PART B—PROVIDER ENROLLMENT PROCESS

Sec. 121. Requirements to disclose employer identification numbers (EINs) and social security numbers (SSNs).
Sec. 122. Fees for agreements with Medicare providers and suppliers.
Sec. 123. Authority to refuse to enter into Medicare or Medicaid agreements with individuals or entities convicted of felonies.
Sec. 124. Fees and requirements for issuance of standard health care identifiers.

TITLE II—PROVIDER REIMBURSEMENT AND RELATED MATTERS

PART A—COVERAGE AND PAYMENT LIMITS

Sec. 201. No home health benefits based solely on drawing blood.
Sec. 202. Monthly certification for hospice care after first six months.
Sec. 203. Payment for home hospice care on basis of geographic location of home.
Sec. 204. Limitation on hospice care liability for individuals not in fact terminally ill.
Sec. 205. Medicare capital asset sales price equal to book value.
Sec. 206. Repeal of moratorium on bad debt policy.

PART B—BANKRUPTCY PROVISIONS

Sec. 221. Application of certain provisions of the bankruptcy code.

TITLE III—MEDICARE MENTAL HEALTH PARTIAL HOSPITALIZATION SERVICES

Sec. 301. Services not to be furnished in residential settings.

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Sec. 302. Additional requirements for community mental health centers.
Sec. 303. Prospective payment system.

TITLE IV—MEDICARE RURAL HEALTH CLINICS

Sec. 401. Per-visit payment limits for provider-based clinics.
Sec. 402. Assurance of quality services.
Sec. 403. Waiver of certain staffing requirements limited to clinics in program.
Sec. 404. Refinement of shortage area requirements.
Sec. 405. Decreased beneficiary cost sharing for RHC services.
Sec. 406. Prospective payment system for RHC services.

(c) REFERENCE TO SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in this act an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference is considered to be made to that section or other provision of the Social Security Act.

TITLE I—ACCOUNTABILITY OF SERVICE PROVIDERS

PART A—SANCTION AUTHORITY

SEC. 101. EXCLUSION OF ENTITY CONTROLLED BY FAMILY MEMBER OF A SANCTIONED INDIVIDUAL.

Section 1128 (42 U.S.C. 1320a–7) is amended—

(1) in subsection (b)(8), by inserting ", or an immediate family member of such person (as defined in section 1128(j)), or a member of the household of such person (as defined in section 1128(k))" after "the Secretary determines that a person"; and

(2) by adding after subsection (i) the following new subsections:

"(j) DEFINITION OF IMMEDIATE FAMILY MEMBER.—For purposes of subsection (b)(8), the term 'immediate family member' means a husband or wife; natural or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, or stepsister; father-, mother-, daughter-, son-, brother-, or sister-in-law; grandparent or grandchild; or spouse of a grandparent or grandchild.

"(k) DEFINITION OF MEMBER OF THE HOUSEHOLD.—For purposes of subsection (b)(8), the term 'member of the household' means any person sharing a common abode as part of a single family unit, including domestic employees and others who live together as a family unit, but not including a roomer or boarder.".

SEC. 102. CIVIL MONEY PENALTIES (CMPS) FOR KICKBACKS.

(a) PERMITTING SECRETARY TO IMPOSE CIVIL MONETARY PENALTY.—Section 1128A(a) (42 U.S.C. 1320a–7a(a)) is amended—

(1) by striking "or" at the end of paragraph (4);

(2) by adding "or" at the end of paragraph (5); and

(3) by adding after paragraph (5) the following new paragraph:

"(6) commits an act described in paragraph (1) or (2) of section 1128B(b);".

(b) DESCRIPTION OF CIVIL MONETARY PENALTY APPLICABLE.—Section 1128A(a) (42 U.S.C. 1320a–7a(a)) is amended—

(1) by striking "occurs)." in the matter following paragraph (6) and inserting "occurs; or, in cases under paragraph (6), $50,000 for each such violation)."; and

(2) by striking "claim." in the matter following paragraph (6) and inserting "claim (or, in cases under paragraph (6), damages of not more than three times the total amount of remuneration offered, paid, solicited, or received, without regard to whether a portion of such remuneration was offered, paid, solicited, or received for a lawful purpose).".

SEC. 103. CMPS FOR PERSONS THAT CONTRACT WITH EXCLUDED INDIVIDUALS.

Section 1128A(a) (42 U.S.C. 1320a–7a(a)), as amended by section 102, is amended—

(1) by striking "or" at the end of paragraph (5);

(2) by adding "or" at the end of paragraph (6); and

(3) by adding after paragraph (6) the following new paragraph:

"(7) arranges or contracts (by employment or otherwise) with an individual or entity that the person knows or should know is excluded from participation in a Federal health care program (as defined in section 1128B(f)), for the provision of items or services for which payment may be made under such a program;".

SEC. 104. CMPS FOR SERVICES ORDERED OR PRESCRIBED BY AN EXCLUDED INDIVIDUAL OR ENTITY.

Section 1128A(a)(1) (42 U.S.C. 1320a–7a(a)(1)), as amended by section 102, is amended—

(1) in subparagraph (D)—

(A) by inserting ", ordered, or prescribed by such person" after "other item or service furnished";

(B) by inserting "(pursuant to this title or title XVIII)" after "period in which the person was excluded";

(C) by striking "pursuant to a determination by the Secretary" and all that follows through "the provisions of section 1842(j)"; and

(D) by striking "or" at the end; and

(2) by redesignating subparagraph (E) as subparagraph (F); and

(3) by adding after subparagraph (D) the following new subparagraph:

"(E) is for a medical or other item or service ordered or prescribed by a person excluded (pursuant to this title or title XVIII) from the program under which the claim was made, and the person furnishing such item or service knows or should know of such exclusion, or".

SEC. 105. CMPS FOR FALSE CERTIFICATION OF ELIGIBILITY TO RECEIVE PARTIAL HOSPITALIZATION AND HOSPICE SERVICES.

Section 1128A(b)(3) (42 U.S.C. 1320a–7a(b)(3)) is amended—

(1) in subparagraph (A)(ii), by inserting ", hospice care, or partial hospitalization services" after "home health services"; and

(2) in subparagraph (B), by inserting ", section 1814(a)(7) in the case of hospice care, or section 1835(a)(2)(F) in the case of partial hospitalization services" after "home health services".

SEC. 106. EXTENSION OF SUBPOENA AND INJUNCTION AUTHORITY.

(a) SUBPOENA AUTHORITY.—Section 1128A(j)(1) (42 U.S.C. 1320a–7a(j)(1)) is amended by inserting "and section 1128" after "with respect to this section".

(b) INJUNCTION AUTHORITY.—Section 1128A(k) (42 U.S.C. 1320a–7a(k)) is amended by inserting "or an exclusion under section 1128," after "subject to a civil monetary penalty under this section,".

(c) CLARIFYING AMENDMENTS.—Section 1128A(j) (42 U.S.C. 1320a–7a(j)) is amended—

(1) in paragraph (1)—

(A) by inserting ", except that, in so applying such sections, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively" after "with respect to title II"; and

(B) by striking the second sentence; and

(2) in paragraph (2), to read as follows:

"(2) The Secretary may delegate to the Inspector General of the Department of Health and Human Services any or all authority granted under this section or under section 1128.".

(d) CONFORMING AMENDMENT.—Section 1128 (42 U.S.C. 1320a–7) is amended by adding at the end the following new subsection:

"(j) REFERENCE TO LAWS DIRECTLY AFFECTING THIS SECTION.—For provisions of law concerning the Secretary's subpoena and injunction authority under this section, see section 1128A(j) and (k).".

SEC. 107. KICKBACK PENALTIES FOR KNOWING VIOLATIONS.

Section 1128B(b) (42 U.S.C. 1320a–7b(b)) is amended by striking "and willfully" each place it occurs.

SEC. 108. ELIMINATION OF EXCEPTION OF FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM FROM DEFINITION OF FEDERAL HEALTH CARE PROGRAM.

Section 1128B(f)(1) (42 U.S.C. 1320a–7b(f)(1)) is amended by striking "(other than the health insurance program under chapter 89 of title 5, United States Code)".

SEC. 109. AMOUNTS OF CMPS.

Section 1842(j)(2) (42 U.S.C. 1395u(j)(2)) is amended in the second sentence—

(1) by striking "(other than the first 2 sentences of subsection (a) and other than subsection (b))"; and

(2) by inserting before the period "(and for the purpose of so applying section 1128A(a), each violative act by a person with respect to an item or service shall be treated as a claim for payment for that item or service, and the amount of such claim shall be considered to be the amount of the request for payment made by that person with respect to that item or service)".

SEC. 110. LIABILITY OF PHYSICIANS IN SPECIALTY HOSPITALS.

Section 1867(d)(1)(B) (42 U.S.C. 1395dd(d)(1)(B)) is amended—

(1) by inserting "or a physician working at or on-call at a hospital that is subject to the requirements of subsection (g)," after "physician on-call for the care of such an individual,";

(2) by striking "or" at the end of clause (i); and

(3) by adding after clause (ii) the following new clauses:

"(iii) fails or refuses to appear within a reasonable time at a hospital subject to the requirements of subsection (g) in order to provide an appropriate medical screening examination as required by subsection

(a), or necessary stabilizing treatment as required by subsection (b), or

"(iv) fails or refuses to accept an appropriate transfer of a patient to a hospital that has specialized capabilities or facilities as defined in subsection (g),".

SEC. 111. EXPANSION OF CRIMINAL PENALTIES FOR KICKBACKS.

(a) APPLICATION OF CRIMINAL PENALTY AUTHORITY TO ALL HEALTH CARE BENEFIT PROGRAMS.—Section 1128B(b) (42 U.S.C. 1320a–7b(b)) is amended by striking "Federal health care program" each place it appears and inserting "health care benefit program".

(b) ATTORNEY GENERAL'S AUTHORITY TO SEEK CIVIL PENALTIES.—Section 1128B (42 U.S.C. 1320a–7b) is further amended by adding at the end the following new subsection:

"(g)(1) The Attorney General may bring an action in the district courts to impose upon any person who carries out any activity in violation of this section with respect to a Federal health care program a civil penalty of $25,000 to $50,000 for each such violation, and damages of three times the total remuneration offered, paid, solicited, or received.

"(2) A violation exists under paragraph (1) is one or more purposes of the remuneration is unlawful, and the damages shall be the full amount of such remuneration.

"(3) The procedures for actions under paragraph (1) with regard to subpoenas, statute of limitations, standard of proof, and collateral estoppel shall be governed by 31 U.S.C. 3731, and the Federal Rules of Civil Procedure shall apply to actions brought under this section.

"(4) This provision does not affect the availability of other criminal and civil remedies for such violations.".

(c) ATTORNEY GENERAL'S INJUNCTION AUTHORITY.—Section 1128B (42 U.S.C. 1320a–7b) is further amended by adding at the end the following new subsection:

"(h) If the Attorney General has reason to believe that a person is engaging in conduct constituting an offense under subsection (b) or (g), the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.".

(d) DEFINITION.—Section 1128B(f) (42 U.S.C. 1320a–7b(f)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B);

(2) by striking "(f)" and inserting "(f)(1)"; and

(3) by adding at the end the following new paragraph:

"(2) For purposes of this section, the term "health care benefit program" has the meaning given such term in 18 U.S.C. 24(b).".

(e) CONFORMING AMENDMENTS.—

(1) Section 1128A(a) (42 U.S.C. 1320a–7a(a)) is amended in the final sentence by striking "1128B(f)(1)" and inserting "1128B(f)(1)(A)"; and

(2) Section 24(a) of title 18 of the United States Code is amended—

(A) by striking the period at the end of paragraph (2) and adding a semicolon; and

(B) by adding after paragraph (2) the following new paragraph:

"(3) section 1128B of the Social Security Act.".

PART B—PROVIDER ENROLLMENT PROCESS

SEC. 121. REQUIREMENTS TO DISCLOSE EMPLOYER IDENTIFICATION NUMBERS (EINs) AND SOCIAL SECURITY NUMBERS (SSNs).

(a) DISCLOSING ENTITIES, OWNERS, AND CONTROLLING INTERESTS.—Section 1124 (42 U.S.C. 1320a–3) is amended by adding after subsection (b) the following new subsection:

"(c) REQUIREMENT TO FURNISH SOCIAL SECURITY NUMBERS AND EMPLOYER IDENTIFICATION NUMBERS.—No payment may be made to any disclosing entity under title V, XVIII, or XIX unless such disclosing entity furnishes to the Secretary both the employer identification number and social security number of—

"(1) the disclosing entity;

"(2) each person with an ownership or control interest (as defined in subsection (a)(3)); and

"(3) any subcontractor in which the entity directly or indirectly has a 5 percent or more ownership interest.".

(b) OTHER MEDICARE PROVIDERS.—Section 1124A (42 U.S.C. 1320a–3a) is amended—

(1) in subsection (a)—

(A) by striking "and" at the end of paragraph (1);

(B) by striking the period at the end of paragraph (2) and inserting "; and"; and

(C) by adding after paragraph (2) the following new paragraph:

"(3) including the employer identification number and social security number of the disclosing part B provider and any person, managing employee, or other entity identified under paragraph (1) or (2).";

and

(2) in subsection (c) by inserting "(or, for purposes of subsection (a)(3), any entity receiving payment)" after "on an assignment-related basis".

(c) VERIFICATION BY SOCIAL SECURITY ADMINISTRATION (SSA).—Section 1124A (42 U.S.C. 1320a–3a) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by adding after subsection (b) the following new subsection:

"(c) VERIFICATION BY SOCIAL SECURITY ADMINISTRATION.—

"(1) TRANSMITTAL BY HHS.—The Secretary shall transmit to the Social Security Administration information concerning each social security number and employer identification number supplied to the

Secretary pursuant to subsection (a)(3) or section 1124(c) to the extent necessary for verification of such information in accordance with paragraph (2).

"(2) VERIFICATION BY SSA.—The Social Security Administration shall verify the accuracy of, or correct, the information supplied by the Secretary pursuant to paragraph (1), and shall report such verifications or corrections to the Secretary.

"(3) FEES FOR SSA VERIFICATION.—The Secretary shall reimburse the Commissioner of Social Security, at a rate negotiated between the Secretary and the Commissioner, for the costs incurred by the Commissioner in performing the verification and correction services described in this subsection.".

SEC. 122. FEES FOR AGREEMENTS WITH MEDICARE PROVIDERS AND SUPPLIERS.

(a) FEES RELATED TO MEDICARE PROVIDER AND SUPPLIER ENROLLMENT AND REENROLLMENT.—Section 1866 is amended—

(1) in the heading, by adding "AND ENROLLMENT OF OTHER PERSONS FURNISHING SERVICES" after "PROVIDERS OF SERVICES"; and

(2) by adding at the end the following new subsection:

"(j) ENROLLMENT PROCEDURES AND FEES.—

"(1) ENROLLMENT.—The Secretary is authorized to establish a procedure for enrollment (and periodic reenrollment) of individuals or entities that are not providers of services subject to the provisions of subsection (a) but that furnish health care items or services under this title.

"(2) FEES.—The Secretary is authorized to impose fees for initiation and renewal of provider agreements and for enrollment and periodic reenrollment of other individuals and entities furnishing health care items or services under this title, in amounts up to the full amount which the Secretary reasonably estimates to be sufficient to cover the Secretary's costs related to the process for initiating and reviewing such agreements and enrollments. Fees collected pursuant to this paragraph shall be credited to a special fund of the United States Treasury, and shall remain available until expended, to the extent and in such amounts as provided in advance in appropriations acts, for necessary expenses for these purposes, including costs of establishing and maintaining procedures and records systems; processing applications; and background investigations.".

SEC. 123. AUTHORITY TO REFUSE TO ENTER INTO MEDICARE OR MEDICAID AGREEMENTS WITH INDIVIDUALS OR ENTITIES CONVICTED OF FELONIES.

(a) MEDICARE PART A.—Section 1866(b)(2) (42 U.S.C. 1395cc(b)(2)) is amended—

(1) by striking "or" at the end of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting ", or"; and

(3) by adding after subparagraph (C) the following new subparagraph:

"(D) has ascertained that the provider has been convicted of a felony under Federal or State law for an offense which the Secretary determines is inconsistent with the best interests of program beneficiaries.".

(b) MEDICARE PART B.—section 1842 (42 U.S.C. 1395u) is amended by adding after subsection (r) the following new subsection:

"(s) The Secretary may refuse to enter into an agreement with a physician or supplier under subsection (h) or may terminate or refuse to renew such agreement, in the event that such physician or supplier has been convicted of a felony under Federal or State law for an of-

fense which the Secretary determines is inconsistent with the best interests of program beneficiaries.".

(c) MEDICAID.—Section 1902(a)(23) (42 U.S.C. 1396(a)) is amended—

(1) by relocating the matter that precedes "provide that, (A)" immediately before the semicolon;

(2) by inserting a semicolon immediately after "1915";

(3) by striking the comma after "Guam" and inserting a semicolon; and

(4) by inserting before the semicolon at the end "and except that this provision does not require a State to provide medical assistance for such services furnished by a person or entity convicted of a felony under Federal or State law for an offense which the State agency determines is inconsistent with the best interests of beneficiaries under the State plan".

SEC. 124. FEES AND REQUIREMENTS FOR ISSUANCE OF STANDARD HEALTH CARE IDENTIFIERS.

Section 1173(b) is amended by adding after paragraph (2) the following new paragraphs:

"(3) REQUIREMENT TO FURNISH SOCIAL SECURITY NUMBERS AND EMPLOYER IDENTIFICATION NUMBERS.—The Secretary shall, as appropriate, require such individuals and entities to provide their

social security numbers and employer identification numbers as a condition to receiving such identifiers.

"(4) FEES.—The Secretary may impose fees for issuing such identifiers, in amounts which the Secretary reasonably estimates to be sufficient to cover all costs to the Secretary associated with such activity. Physicians subject to fees under section 1842(r) shall not be subject to fees under this paragraph. Fees collected pursuant to this paragraph shall be credited to a special fund of the United States Treasury, and shall remain available until expended, to the extent and in such amounts as provided in advance in appropriations acts, for costs incurred by the Secretary in issuing such identifiers, including costs of establishing and maintaining an automated database and procedures; processing applications; and verifying information provided.".

TITLE II—PROVIDER REIMBURSEMENT AND RELATED MATTERS

PART A—COVERAGE AND PAYMENT LIMITS

SEC. 201. NO HOME HEALTH BENEFITS BASED SOLELY ON DRAWING BLOOD.

(a) IN GENERAL.—Sections 1814(a)(2)(C) and 1835(a)(2)(A) (42 U.S.C. 1395f(a)(2)(C) and

1395n(a)(2)(A)) are each amended by inserting "(other than solely venipuncture for the purpose of obtaining a blood sample)" after "skilled nursing care".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to home health services furnished after the sixth month beginning after the date of enactment of this Act.

SEC. 202. MONTHLY CERTIFICATION FOR HOSPICE CARE AFTER FIRST SIX MONTHS.

(a) IN GENERAL.—Sections 1812(a)(4) (42 U.S.C. 1395d(a)(4)) is amended by striking "a subsequent period of 30 days, and a subsequent extension period" and inserting "and subsequent periods of 30 days each,".

(b) CONFORMING AMENDMENTS.—

(1) SECTION 1812(d).—Section 1812(d) (42 U.S.C. 1395d(d)) is amended—

(A) in paragraph (1), by striking "only during two periods of 90 days each" and all that follows through "with respect to each such period, if" and inserting "during a particular period only if, with respect to that period,"; and

(B) in the matter in paragraph (2)(B) preceding clause (i), by striking "90-day or 30-day period or a subsequent extension".

(2) SECTION 1814(a).—Section 1814(a)(7)(A) (42 U.S.C. 1395f(a)(7)(A)) is amended—

(A) by adding "and" at the end of clause (i);

(B) by striking ", and" at the end of clause (ii) and adding a semicolon; and

(C) by striking clause (iii).

(c) EFFECTIVE DATE.—The amendments made by the preceding subsections apply to hospice care furnished after the sixth month beginning after the date of enactment of this Act.

SEC. 203. PAYMENT FOR HOME HOSPICE CARE BASED ON LOCATION WHERE CARE IS FURNISHED.

(a) IN GENERAL.—Section 1814(i)(2) (42 U.S.C. 1395f(i)(2)) is amended by adding at the end the following:

"(D) A hospice program shall submit claims for payment for hospice care furnished in an individual's home under this title only on the basis of the geographic location at which the service is furnished, as determined by the Secretary.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to cost reporting periods beginning on or after October 1, 1997.

SEC. 204. LIMITATION ON HOSPICE CARE LIABILITY FOR INDIVIDUALS NOT IN FACT TERMINALLY ILL.

(a) IN GENERAL.—Section 1879(g) (42 U.S.C. 1395pp(g)) is amended to read as follows:

"(g) A coverage denial described in this subsection is—

"(1) with respect to the provision of home health services to an individual, a failure to meet the requirements of section 1814(a)(2)(C) or section 1835(a)(2)(A) in that the individual—

"(A) is or was not confined to his home; or

"(B) does or did not need skilled nursing care on an intermittent basis; and

"(2) with respect to the provision of hospice care to an individual, a failure to meet the requirement of section 1861(dd)(3)(A).".

(b) CONFORMING AMENDMENT.—Section 1879(f)(4)(A) (42 U.S.C. 1395pp(f)(4)(A)) is amended by striking "subsection (g)" and inserting "subsection (g)(1)".

(c) EFFECTIVE DATE.—The amendments made by the preceding subsections apply to services furnished after the date of enactment of this Act.

SEC. 205. MEDICARE CAPITAL ASSET SALES PRICE EQUAL TO BOOK VALUE.

(a) IN GENERAL.—Section 1861(v)(1)(o) (42 U.S.C. 1395x(v)(1)(O)) is amended—

(1) in clause (i)—

(A) by striking "and (if applicable) a return on equity capital";

(B) by striking "hospital or skilled nursing facility" and inserting "provider of services";

(C) by striking "clause (iv)" and inserting "clause (iii)"; and

(D) by striking "the lesser of the allowable acquisition cost" and all that follows up to the period and inserting "the historical cost of the asset, as recognized under this title, less depreciation allowed, to the owner of record as of the date of enactment of the Medicare and Medicaid Fraud, Abuse and Waste Prevention Amendments of 1997 (or, in the case of an asset not in existence as of that date, the first owner of record of the asset after that date)";

(2) by striking clause (ii); and

(3) by renumbering clauses (iii) and (iv) as (ii) and (iii), respectively.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to changes of ownership that occur

after the third month beginning after the date of enactment of this Act.

SEC. 206. REPEAL OF MORATORIUM ON BAD DEBT POLICY.

Section 4008(c) of the Omnibus Budget Reconciliation Act of 1987 (42 U.S.C. 1395f note) is repealed.

PART B—BANKRUPTCY PROVISIONS

SEC. 221. APPLICATION OF CERTAIN PROVISIONS OF THE BANKRUPTCY CODE.

(a) RESTRICTED APPLICABILITY OF BANKRUPTCY STAY, DISCHARGE, AND PREFERENTIAL TRANSFER PROVISIONS TO MEDICARE AND MEDICAID DEBTS.—Title XI is amended by inserting after section 1143 the following new section:

"APPLICATION OF CERTAIN PROVISIONS OF THE BANKRUPTCY CODE

"SEC. 1144. (a) MEDICARE AND MEDICAID-RELATED ACTIONS NOT STAYED BY BANKRUPTCY PROCEEDINGS.—The commencement or continuation of any action against a debtor under this title or title XVIII or XIX (other than an action with respect to health care services for the debtor under title XVIII), including any action or proceeding to exclude or suspend the debtor from program participation, assess civil money penalties, recoup or set off overpayments, or deny or suspend payment of claims shall not be subject to the provisions of section 362(a) of title 11 of the United States Code.

"(b) MEDICARE- AND MEDICAID-RELATED DEBT NOT DISCHARGEABLE IN BANKRUPTCY.—A debt owed to the United States or to a State for an overpayment under title XVIII or XIX (other than an overpayment for health care services for the debtor under title XVIII), or for a penalty, fine, or assessment under this title or title XVIII or XIX, shall not be dischargeable under any provision of title 11 of the United States Code.

"(c) REPAYMENT OF CERTAIN DEBTS CONSIDERED FINAL.—Payments made to repay a debt to the United States or to a State with respect to items or services provided, or claims for payment made, under title XVIII or XIX (including repayment of an overpayment (other than an overpayment for health care services for the debtor under such title XVIII)), or to pay a penalty, fine, or assessment under this title or title XVIII or XIX, shall be considered final and not preferential transfers under section 547 of title 11 of the United States Code.".

(b) MEDICARE RULES APPLICABLE TO BANKRUPTCY PROCEEDINGS.—Title XVIII is amended by adding at the end the following new section:

"APPLICATION OF PROVISIONS OF THE BANKRUPTCY CODE

"SEC. 1894. (a) USE OF MEDICARE STANDARDS AND PROCEDURES.—Notwithstanding any provision of title 11 of the United States Code or any other provision of law,

in the case of claims by a debtor in bankruptcy for payment under this title, the determination of whether the claim is allowable, and of the amount payable, shall be made in accordance with the provisions of this title and title XI and implementing regulations.

"(b) NOTICE TO CREDITOR OF BANKRUPTCY PETITIONER.—In the case of a debt owed to the United States with respect to items or services provided, or claims for payment made, under this title (including a debt arising from an overpayment or a penalty, fine, or assessment under title XI of this title), the notices to the creditor of bankruptcy petitions, proceedings, and relief required under title 11 of the United States Code (including under section 342 of that title and section 2002(j) of the Federal Rules of Bankruptcy Procedure) shall be given to the Secretary. Provision of such notice to a fiscal agent of the Secretary shall not be considered to satisfy this requirement.

"(c) TURNOVER OF PROPERTY TO THE BANKRUPTCY ESTATE.—For purposes of section 542(b) of title 11 of the United States Code, a claim for payment under this title shall not be considered to be a matured debt payable to the estate of a debtor until such claim has been allowed by the Secretary in accordance with procedures under this title.".

TITLE III—MEDICARE MENTAL HEALTH PARTIAL HOSPITALIZATION SERVICES

SEC. 301. SERVICES NOT TO BE FURNISHED IN RESIDENTIAL SETTINGS.

(a) IN GENERAL.—Section 1861(ff)(3)(A) (42 U.S.C. 1395x(ff)(3)(A)) is amended by inserting "other than in an individual's home or in an inpatient or residential setting" before the period.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to services furnished after the sixth month beginning after the date of enactment of this Act.

SEC. 302. ADDITIONAL REQUIREMENTS FOR COMMUNITY MENTAL HEALTH CENTERS.

(a) CRITERIA FOR PROVIDING SERVICES.—Section 1861(ff)(3)(B) (42 U.S.C. 1395x(ff)(3)(B)) is amended by striking "entity—" and all that follows and inserting the following:

"entity that—

"(i) provides the community mental health services specified in section 1913(c)(1)) of the Public Health Service Act;

"(ii) meets applicable certification or licensing requirements for community mental health centers in the State in which it is located;

"(iii) is providing a significant share of its services to individuals who are not eligible for benefits under this title; and

"(iv) meets such additional conditions as the Secretary may specify in the interest of the health and safety of individuals furnished services, or for the effective or efficient furnishing of services.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to services furnished after the sixth month beginning after the date of enactment of this Act.

SEC. 303. PROSPECTIVE PAYMENT SYSTEM.

(a) ESTABLISHMENT OF SYSTEM.—Section 1833 (42 U.S.C. 13951) is amended by inserting after subsection (o) the following new subsection:

"(p) PROSPECTIVE PAYMENT SYSTEM FOR PARTIAL HOSPITALIZATION SERVICES PROVIDED BY A COMMUNITY MENTAL HEALTH CENTER.—The Secretary may establish by regulation a prospective payment system for partial hospitalization services provided by a community mental health center. The system shall provide for appropriate payment levels for efficient centers and take into account payment levels for similar services furnished by other entities.".

(b) COINSURANCE AT 20 PERCENT OF PROSPECTIVE PAYMENT BASIS.—Section 1866(a)(2)(A) (42 U.S.C.

1395cc(a)(2)(A)) is amended by adding at the end the following: "In the case of services described in section 1832(a)(2)(J), clause (ii) of the first sentence of this subparagraph shall be applied by substituting the payment basis established under section 1833(p) for the reasonable charges.".

(c) CONFORMING AMENDMENTS.—Section 1833(a) (42 U.S.C. 1395l(a)) is amended—

(1) in the matter in paragraph (2) preceding subparagraph (A), by striking "and (I)" and inserting "(I), and (J)";

(2) by striking "and" at the end of paragraph (6);

(3) by striking the period at the end of paragraph (7) and adding "; and"; and

(4) by adding at the end the following new paragraph:

"(8) in the case of services described in section 1832(a)(2)(J), 80 percent of the payment basis under the prospective payment system established under section 1833(p).".

(d) EFFECTIVE DATE.—The amendments made by subsections (b) and (c) apply to services furnished after the first calendar year that ends at least six months after

the date on which regulations are issued under section 1833(p) of the Social Security Act (42 U.S.C. 1395l(p)).

TITLE IV—MEDICARE RURAL HEALTH CLINICS

SEC. 401. PER-VISIT PAYMENT LIMITS FOR PROVIDER-BASED CLINICS.

(a) EXTENSION OF LIMIT.—

(1) AMENDMENT.—The matter in section 1833(f) (42 U.S.C. 1395l(f)) preceding paragraph (1) is amended by striking "independent rural health clinics" and inserting "rural health clinics (other than such clinics in rural hospitals with less than 50 beds)".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) applies to services furnished after 1997.

(b) TECHNICAL CLARIFICATION.—Section 1833(f)(1) (42 U.S.C. 1395l(f)(1)) is amended by inserting "per visit" after "$46".

SEC. 402. ASSURANCE OF QUALITY SERVICES.

(a) IN GENERAL.—Subparagraph (I) of the first sentence of section 1861(aa)(2) (42 U.S.C. 1395x(aa)(2)) is amended to read as follows:

"(I) has a quality assessment and performance improvement program, and appropriate procedures

for review of utilization of clinic services, as the Secretary may specify,".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 1998.

SEC. 403. WAIVER OF CERTAIN STAFFING REQUIREMENTS LIMITED TO CLINICS IN PROGRAM.

(a) IN GENERAL.—Section 1861(aa)(7)(B) (42 U.S.C. 1395x(aa)(7)(B)) is amended by inserting ", or if the facility has not yet been determined to meet the requirements (including subparagraph (J) of the first sentence of paragraph (2)) of a rural health clinic.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to waiver requests made after 1997.

SEC. 404. REFINEMENT OF SHORTAGE AREA REQUIREMENTS.

(a) DESIGNATION REVIEWED TRIENNIALLY.—Section 1861(aa)(2) (42 U.S.C. 1395x(aa)(2)) is amended in the second sentence, in the matter in clause (i) preceding subclause (I)—

(1) by striking "and that is designated" and inserting "and that, within the previous three-year period, has been designated"; and

(2) by striking "or that is designated" and inserting "or designated".

(b) AREA MUST HAVE SHORTAGE OF HEALTH CARE PRACTITIONERS.—Section 1861(aa)(2) (42 U.S.C. 1395x(aa)(2)), as amended by subsection (a), is further amended in the second sentence, in the matter in clause (i) preceding subclause (I)—

(1) by striking the comma after "personal health services"; and

(2) by inserting "and in which there are insufficient numbers of needed health care practitioners (as determined by the Secretary)," after "Bureau of the Census)".

(c) PREVIOUSLY QUALIFYING CLINICS GRANDFATHERED ONLY TO PREVENT SHORTAGE.—Section 1861(aa)(2) (42 U.S.C. 1395x(aa)(2)) is amended in the third sentence by inserting before the period "if it is determined, in accordance with criteria established by the Secretary in regulations, to be essential to the delivery of primary care services that would otherwise be unavailable in the geographic area served by the clinic".

(d) EFFECTIVE DATES; IMPLEMENTING REGULATIONS.—

(1) IN GENERAL.—Except as otherwise provided, the amendments made by the preceding subsections take effect on January 1 of the first cal-

endar year beginning at least one month after enactment of this Act.

(2) CURRENT RURAL HEALTH CLINICS.—The amendments made by the preceding subsections take effect, with respect to entities that are rural health clinics under title XVIII of the Social Security Act on the date of enactment of this Act, on January 1 of the second calendar year following the calendar year specified in paragraph (1).

(3) GRANDFATHERED CLINCS.—

(A) IN GENERAL.—The amendment made by subsection (c) shall take effect on the effective date of regulations issued by the Secretary under subparagraph (B).

(B) REGULATIONS.—The Secretary shall issue final regulations implementing subsection (c) that shall take effect no later than January 1 of the third calendar year beginning at least one month after enactment of this Act.

SEC. 405. DECREASED BENEFICIARY COST SHARING FOR RHC SERVICES.

(a) IN GENERAL.—Clause (ii) of the second sentence of section 1861(aa)(2) (42 U.S.C. 1395x(aa)(2)) is amended by striking "pursuant to subsections (a) and (b) of section 1833" and inserting "described in section

1833(b) or clause (ii) of the first sentence of section 1866(a)(2)(A) (but any coinsurance amount shall not exceed 20 percent of the limit described in section 1833(f), and no coinsurance amount shall be imposed for items and services described in section 1861(s)(10)(A))''.

(b) CONFORMING AND TECHNICAL AMENDMENT.—Section 1833(a)(3) (42 U.S.C. 1395l(a)(3)) is amended to read as follows:

"(3)(A) in the case of rural health clinic services, the costs which—

"(i) are (I) reasonable and related to the cost of furnishing such services or (II) based on such other tests of reasonableness as the Secretary may prescribe in regulations, including those authorized under section 1861(v)(1)(A);

"(ii) do not exceed the limit under subsection (f);

"(iii) are reduced by any deductible or coinsurance amount a clinic or center may charge as described in clause (ii) of the second sentence of section 1861(aa)(2); and

"(iv) do not exceed 80 percent of such costs determined under the preceding clauses (other than for items and services described in section 1861(s)(10)(A)); and

"(B) in the case of Federally qualified health center services and services described in subparagraph (E) of section 1832(a)(2), the costs which—

"(i) are (I) reasonable and related to the cost of furnishing such services or (II) based on such other tests of reasonableness as the Secretary may prescribe in regulations, including those authorized under section 1861(v)(1)(A);

"(ii) are reduced by the amount a provider may charge as described in clause (ii) of section 1866(a)(2)(A); and

"(iii) do not exceed 80 percent of such costs determined under the preceding clauses (other than for items and services described in section 1861(s)(10)(A));".

(c) EFFECTIVE DATE.—The amendments made by the preceding subsections apply to services furnished after 1997.

SEC. 406. PROSPECTIVE PAYMENT SYSTEM FOR RHC SERVICES.

(a) ESTABLISHMENT OF SYSTEM.—Section 1833 (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:

"(t) RURAL HEALTH CLINIC SERVICES.—

"(1) ESTABLISHMENT OF PROSPECTIVE PAYMENT SYSTEM.—The Secretary shall establish by regulation (which may be an interim final regulation) a prospective payment system for rural health clinic services. The regulation shall be issued no later than June 30, 2000.

"(2) ADJUSTMENTS FOR INAPPROPRIATE UTILIZATION.—The Secretary may provide for adjustments to the payment levels under the prospective payment system to take into account excessive utilization (if any) of rural health clinic services.

"(3) ANNUAL UPDATE.—The Secretary shall provide for an annual update to the payment levels under the prospective payment system.

"(4) BUDGET NEUTRAL PAYMENTS.—The Secretary shall establish the initial payment levels under paragraph (1) in a manner that results in aggregate payments (including payments by individuals to whom services are provided) for the first year, as estimated by the Secretary, approximately equal to the aggregate payments that would have otherwise been made under this part.".

(b) COINSURANCE AT 20 PERCENT OF PROSPECTIVE PAYMENT BASIS.—Clause (ii) of the second sentence of section 1861(aa)(2) (42 U.S.C. 1395x(aa)(2)) (as amend-

ed by section 405(a) of this Act) is further amended by striking "described in section 1833(b) or clause (ii) of the first sentence of section 1866(a)(2)(A) (but any coinsurance amount shall not exceed 20 percent of the limit described in section 1833(f), and" and inserting "described in section 1833(b) (for any deductible amount) and 20 percent of the payment basis under the prospective payment system established under section 1833(t) (for any coinsurance amount, but".

(c) CONFORMING AMENDMENTS.—

(1) SEC. 1833(a)(3)(A).—Section 1833(a)(3)(A) (42 U.S.C. 1395l(a)(3)(A)) (as enacted by section 405(b) of this Act) is amended by striking everything after "rural health clinic services," and inserting "80 percent of the payment basis under the prospective payment system established under section 1833(t) (or 100 percent, for items and services described in section 1861(s)(10)(A)); and".

(2) SEC. 1833(f).—Section 1833(f) (42 U.S.C. 1395l(f)) is repealed.

(d) EFFECTIVE DATE.—The amendments made by subsections (b) and (c) apply to services furnished after the first calendar year that ends at least six months after

the date on which regulations are issued under section 1833(t) of the Social Security Act (42 U.S.C. 1395l(t)).

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